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Yeoh Oon Theam lwn Lee Ewe Bee & Lain-lain

MAHKAMAH TINGGI (PULAU PINANG) — SAMAN PEMULA NO 24–1132 TAHUN 1996
WAN ADNAN MUHAMAD H
18 NOVEMBER 1998

B

Acara Sivil *— Pihak-pihak — Locus standi — Permohonan untuk dijadikan pihak di dalam prosiding untuk mengetepikan perintah membenarkan jualan tanah — Sama ada bakal pencelah waris si mati dan mempunyai locus standi*

Ini adalah permohonan oleh bakal pencelah, yang mendakwa diri
C mereka waris kepada harta pusaka si mati, untuk mereka dijadikan pihak dalam prosiding supaya mereka dapat mengetepikan perintah membenarkan penjualan sebidang tanah yang diperolehi oleh Yeoh Gon Theam (pemohon/penentang), iaitu pentadbir tunggal harta pusaka si mati. Bakal pencelah mendakwa dalam afidavit mereka bahawa pemohon telah mendapat surat kuasa tadbir de bonis non
D tanpa mendapat persetujuan mereka. Peguam bakal pencelah menghujahkan bahawa tidak ada usaha untuk menjejaki waris-waris si mati dan permohonan-permohonan untuk surat kuasa tadbir harta pusaka si mati patut diiklankan. Persoalan yang harus diputuskan oleh mahkamah ialah sama ada bakal pencelah mempunyai locus standi
E bagi permohonannya.

Diputuskan, menolak permohonan bakal pencelah dengan kos:

(1) Dari keterangan afidavit sokongan dan afidavit jawapan bakal pencelah, nyata bahawa mereka hanya mendakwa yang mereka adalah waris si mati. Mahkamah berpendapat dakwaan tersebut
F tidak mencukupi untuk mereka dijadikan pihak dalam prosiding bagi membolehkan mereka mengetepikan perintah membenarkan jualan tanah tersebut. Lagipun perintah tersebut telah pun disempurnakan oleh pihak pembeli (lihat ms 133G–H).

(2) Perintah mahkamah yang mengeluarkan surat kuasa mentadbir
G kepada pemohon masih lagi sah kecuali ia dibatalkan oleh mahkamah. Jadi bakal pencelah tidak mempunyai hak kepentingan di sisi undang-undang untuk menjadi pihak di dalam prosiding ini (lihat ms 134D).

(3) Nyata bahawa bakal pencelah lebih terkilan atas harga jualan
H tanah tersebut yang pada pandangan mereka dijual dengan harga yang murah. Nampaknya persoalan berkisar atas harga tanah tersebut. Oleh yang demikian, terserlah gambaran kepentingan komersil bakal pencelah yang tidak mendapat tempat di bawah prinsip kes *Tohtonku*. Jadi, atas kepentingan komersil, bakal pencelah tidak berhak untuk mencelah (lihat ms 136A–B).

I (4) Selagi taraf bakal pencelah masih tidak mendapat pengikirafan mahkamah yang mereka adalah waris kadim si mati, oleh itu bakal pencelah belum lagi mempunyai hak atau kepentingan sebenar.

Jika tidak ada hak manakan untuk mendapat remedi. Mahkamah akan membenarkan seorang itu mencelah jika dia mempunyai kepentingan secara langsung dengan tanah tersebut (lihat ms 136B–C).

[**English summary**

This was an application by intending interveners, who alleged they were the heirs to the deceased's estate, to be made a party so that they could set aside the order granting the sale of a piece of land obtained by Yeoh Gon Theam (the applicant/respondent), ie the sole administrator of the deceased's estate. The intending interveners alleged in their affidavit that the applicants had obtained letters of administration de bonis non without their consent. Counsel for the interveners submitted that there was no attempt to trace the deceased's heirs and the application for letters of administration over the deceased's estate should be advertised. The question to be determined by the court was whether the intending interveners had locus standi in the application.

Held, dismissing the interveners' application with costs:

(1) From the affidavit evidence in support and affidavit in reply of the interveners, it was apparent that they merely alleged they were the deceased's heirs. The court was of the opinion the allegation was insufficient for them to be made a party in the proceedings to enable them to set aside the order for sale. Furthermore the order had already been perfected by the purchasers (see p 133G–H).

(2) The court order issuing letters of administration to the applicant was still valid unless it was struck out by the court. Thus the interveners did not have the legal right to be a party in this proceeding (see p 134D).

(3) It was clear that the interveners were more aggrieved by the sale of the land which in their view was sold at a low price. It appeared that the issue revolved around the price of the land. Therefore, it was obvious the intending interveners' commercial interest had no place under the principle in *Tohtonku*'s case. Thus, on the basis of commercial interests, the intending interveners had no right to intervene (see p 136A–B).

(4) As long as the position of the intending interveners still did not receive recognition from the court that they were the deceased's heirs, therefore the intending interveners did not have the right or interest. If there were no right a remedy would be unavailable. The court will allow an individual to intervene if he has direct interest in the land (see p 136B–C).]

A **Nota-nota**

Untuk kes-kes mengenai pihak-pihak yang mempunyai locus standi, lihat 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) perenggan 3329–3335.

B **Kes-kes yang dirujuk**

Chor Phaik Har v Farlim Properties Sdn Bhd [1997] 3 MLJ 188 (dirujuk)
Gan Khay Beng & Ors v Ng Liat Cheng [1982] 1 MLJ 163 (dirujuk)
Lee Ah Thaw & Anor v Lee Chun Tek [1978] 1 MLJ 173 (dirujuk)
C *Poh Ah Choo v Tan Siw Gim & Ors* [1986] 1 MLJ 337 (dibeza)
Sander Lead Co Inc v Entores Metal Broker Ltd [1984] 1 WLR 452 (dirujuk)
Tohtonku Sdn Bhd v Superace (M) Sdn Bhd [1992] 2 MLJ 63 (dirujuk)

D **Undang-undang yang dirujuk**

Kaedah-Kaedah Mahkamah Tinggi 1980 A 72 k 7
Kanun Tanah Negara 1965 s 340

Anoop Singh (*Anoop & See*) bagi pihak bakal pencelah.
Mahinder Singh Dulku (*Ong Eng Khuan* with him) (*CS Ong & Co*) bagi
E pihak pemohon/penentang.

Wan Adnan Muhamad H: Ini adalah permohonan (lampiran 11) oleh bakal pencelah-pencelah untuk mereka dijadikan pihak dalam prosiding supaya akhirnya mereka dapat ketepikan perintah (lampiran 3) yang diberi kepada Yeoh Gon Theam, iaitu pentadbir tunggal harta pesaka Baba
F Mahee @ Lim Mah Ee ('si mati') pada 8 Januari 1997, membenarkan penjualan sebidang tanah yang dikenali sebagai Lot 3475, Seksyen 5 Bandar Georgetown, Daerah Timur Laut, Pulau Pinang ('tanah tersebut') kepada Syarikat Wayrex Sdn Bhd ('Wayrex') dengan harga RM450,000 dan seterusnya tanah tersebut dipindahmilik kepada Wayrex. Permohonan tersebut dibuat melalui lampiran 2 dan disokong oleh afidavit sokongan
G (lampiran 1) yang menggariskan sebab-sebab antara lain ialah membolehkan pentadbir membayar cukai tanah tertunggak sejumlah RM335,205.93. Laporan penilaian tanah tersebut dikemukakan melalui lampiran 1 eks YOT–4 atas kadar nilai pasaran bersih sejumlah RM445,000 (free from encumbrances). Nilaian tidak bersih ialah
H RM3,352,000 kerana tanah tersebut diduduki setinggan berkubur dan lain-lain belanja.

Bakal-bakal pencelah Lee Ewe Bee, Lee Ah Loong, Lee Ewe Liang, Lee Chiew Kin, Lee Chew Kee, Lim Hock Hin @ Tan Hock Hin dan Lee Chiew Sim ('bakal pencelah') yang mendakwa sebagai pewaris harta pusaka si mati telah memfailkan saman dalam kamar (lampiran 6) pada
I 3 September 1997 untuk mencelah dalam prosiding dan seterusnya memohon perintah (lampiran 3) diketepikan atau digantung. Lampiran 6 disokong oleh afidavit sokongan Lee Ewe Liang (lampiran 5) yang diikrar

pada 1 November 1997. Alasan yang diberi di lampiran 5 ialah antara lain penipuan, salah laku, harga jualan rendah dan sebagainya. A

Pada 29 April 1998, iaitu tarikh pendengaran kali keempat permohonan bakal pencelah (lampiran 6) selepas ditangguh atas sebab jawab-menjawab afidavit, peguam bagi pihak Yeoh Oon Thean (pemohon) mempersoalkan 'locus standi' bakal pencelah bersabit lampiran 6. Peguam pemohon menyatakan tidak ada keterangan untuk menunjukkan bakal pencelah adalah waris si mati. Akhirnya peguam bakal pencelah bersetuju untuk menarik balik lampiran 6 dengan kebebasan memfailkannya semula. Saya membatalkan lampiran 6 tanpa kos dan pemohon berhak kepada kos jika lampiran 6 difailkan semula seperti disarankan oleh peguam bakal pencelah sendiri. B C

Pada 5 Jun 1998, bakal pencelah memfailkan semula permohonan terdahulu (lampiran 6) yang kini menjadi lampiran 11.

Untuk mengetahui dengan jelas latar belakang kes ini, saya petik peristiwa yang dipaparkan oleh Yeoh Oon Theam (pemohon) dalam akuan berkanunnya (lampiran 14 eks L–D) yang dilampirkan sebagai ekshibit kepada afidavit jawapan (lampiran 14) Lee Ewe Liang ('bakal pencelah 3'). Detik-detik peristiwa berikut tidak dipertikaikan oleh bakal pencelah: D

1 ...

2 The said deceased (Baba Mahee) was a Chinese inhabitant of Province of Wales who died intestate about 30 years prior to 1 August 1878 having duly executed his last will and testament dated 24–12–1845. E

3 Under the said will, the deceased appointed one Tan Kim Neoh to be executrix of his estate.

4 At the time of his death, the deceased was the registered proprietor of all that piece of land known as Lot 3475, (formerly known as Lot 56) Town Section 5, North East District, Penang (hereinafter referred to as the said land) by virtue of Deed Regd No 6093 of 1831. I annex herewith a photocopy of the said deed and marked as exh 'A–I'. F

5 The said Tan Kim Neoh died without obtaining probate under the will of the said deceased.

6 On 8 September 1856, the will of the said deceased was proved before the then Division of the Court of Judicature of Province of Wales and letters of administration with the said will annexed were granted to Lim Hong Guan, the grand nephew of the said deceased. G

7 The said Lim Hong Guan died without having fully administered the said estate.

8 On 1 August 1878, the grant of letters of administration de bonis non with will annexed were granted by the Supreme Court of the Straits Settlements to Kam Chin Neoh, the niece of the said deceased. H

9 The said Kam Chin Neoh died on 10 August 1883 without having fully administered the said estate of the deceased and on 15 October 1883, a further grant of letters of administration de bonis non with will annexed were granted to Tan Chye Hun, one of the great grand nieces of the said deceased. I

10 The said Tan Chye Hun died a long time ago without having the said estate fully administered. Thereafter, the said land was under the control

and care of my grandfather, Yeoh Cheow Eang, who died on 23 July 1954.

11 Sometime in 1951, a portion of the said land was acquired by the government. I enclose herewith photocopies of the notices from the land office and the reply given by my grandfather and marked as exh 'A–2' in a bundle.

12 I am now in the process of applying to court for fresh grant of letters of administration de bonis non with will annexed in respect of the estate of the said deceased.

13 Recently, I made a check with the Registry of Land Titles Penang and discovered that the said land has been vested in the Majlis Ugama Islam Pulau Pinang and Seberang Prai pursuant to an order of court dated 15 April 1991 in Originating Summons No 24–263–91 ('MT 2').

14 My solicitors have made a search of the court file and discovered that the Majlis Ugama Islam obtained the aforesaid order by representing to the court:

(a) that the said Baba Mahee (stated as Baba Mahu) was a Muslim and he died leaving no issue; and

(b) that under the Muslim Law Enactment 1959, when a Muslim dies leaving no issue his estate shall vest with the Baitulmal.

15 I am advised by my solicitors and verily believe that the said vesting order dated 15 April 1991 was obtained by Majlis Ugama Islam under a misapprehension. The said deceased was a Chinese and not a Muslim as deposed to above. In the circumstances, the Majlis Ugama Islam had no basis whatsoever to apply to court for the said vesting order.

16 I have instructed my solicitors to file legal proceedings against Majlis Ugama Islam and other parties responsible for having the said land vested in the Majlis Ugama Islam and to set aside the court order dated 15 April 1991 referred to above.

17 In the interim, I wish to lodge a private caveat against the said land to protect the interest of the beneficiaries of the estate of Lim Mah Ee @ Baba Mahee, since deceased, including myself.

Persoalan yang harus diputuskan oleh mahkamah ialah sama ada bakal pencelah mempunyai 'locus standi' bagi permohonannya.

Dari keterangan afidavit sokongan (lampiran 10) bakal pencelah dan afidavit jawapan mereka (lampiran 14), nyata bahawa mereka hanya mendakwa yang mereka adalah waris si mati. Pada pendapat saya, dakwaan tersebut tidak mencukupi untuk mereka dijadikan pihak dalam prosiding bagi membolehkan mereka mengetepikan perintah membenarkan jualan tanah tersebut. Lagi pun perintah tersebut telah pun disempurnakan oleh pihak pembeli Wayrex (lihat lampiran 3).

Prinsip undang-undang yang terpakai dalam permohonan (lampiran 11) seperti ini ialah sebagaimana diputuskan oleh Mahkamah Agung (ketika itu) dalam kes *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63.

Di halaman 65, Mohamed Yusof HMA berkata seperti berikut:

> It is settled law, on the authorities, that a party may be added if his 'legal interests' will be affected by the judgment in the action but not if his

commercial interests alone would be affected: per Lord Diplock in *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 at pp 55–56. In that case, the Privy Council had formulated the test to determine whether a party's interests in the matter are 'legal' or merely 'commercial' in the following words (at p 56):

> 'A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in this action?'

Bakal pencelah mendakwa dalam afidavit mereka (lampiran 14) bahawa mereka adalah waris-waris kadim yang sah dan pemohon telah mendapat surat kuasa mentadbir de bonis non melalui Petisyen No 31–177–93 tanpa mendapat persetujuan mereka. Malahan kedudukan bakal pencelah masih belum lagi ditentukan oleh mahkamah sama ada merekalah waris-waris yang sah harta pusaka si mati kerana mereka mula memfailkan tindakan sitasi di bawah A 72 k 7 Kaedah-Kaedah Mahkamah Tinggi 1980 selepas mereka menarik balik lampiran 6.

Perintah mahkamah yang mengeluarkan surat kuasa mentadbir kepada pemohon masih lagi sah kecuali ia dibatalkan oleh mahkamah. Jadi bakal pencelah tidak mempunyai hak kepentingan di sisi undang-undang ('legal right') untuk menjadi pihak dalam prosiding ini.

Sama ada seorang mempunyai kepentingan dalam tanah tersebut sebagai waris atau tidak telah dijelaskan oleh Lee Hun Hoe (ketika itu HB (Borneo) dalam kes *Lee Ah Thaw & Anor v Lee Chun Tek* [1978] 1 MLJ 173 di halaman 176. Beliau berkata:

> The testator's property was vested in his executor for the purpose of administration of his estate and no one else has any property interest on such property. It may seem incredible to deny to a residuary beneficiary any interest in those assets of an incomplete administered estate. It has been mistakenly assumed that for all purpose and at every moment of time the law requires the evidence of two different kinds of estate or interest in those properties, the legal and the equitable. Lord Radcliffe made the position very clear in *Livingston*'s case [1964] 3 All ER 692, when he said at p 699:
>
> > 'There is no need to make this assumption. When the whole right of property is in a person, as it is in an executor, there is no need to distinguish between the legal and equitable interest in that property, any more than there is for the property of a full beneficial owner. What matters is that the court will control the executor in the use of his rights over assets that come to him in that capacity; but it will do it by the enforcement of remedies which do not involve the admission or recognition of equitable rights of property in those assets. Equity in fact calls into existence and protects equitable rights and interests in property only where their recognition has been found to be required in order to give effect to its doctrines.'
>
> I do not think they used the word 'interest' in a general and popular sense. If they do so they would also fail. As Lord Radcliffe said in *Livingston*'s case at p 702:
>
> > It is not enough for this purpose to speak of an 'interest' in a general or popular sense. It is apt to recall what Lord Halsbury LC, said on this point in his speech in *Sudeley*'s case [1897] AC 11.

> With reference to a great many things, it would be quite true to say that she had an interest in these New Zealand mortgages — that she had a claim on them: in a loose and general way of speaking no one would deny that was a fair statement. But the moment you come to give a definite effect to the particular thing to which she becomes entitled under his will, you must use strict language, and see what it is that the person is entitled to; because upon that in this case depends the solution of the question. It is idle to use such phrases as ... that she had an 'interest' in this estate.
>
> Applying this test to the present case it is clearly not possible to say that appellants have any kind of 'interest' in the lands since the administration is incomplete and the residue unascertained. What appellants have under the will is the right to sue the executor or trustee if he has not administered the estate properly. That right has been exercised by them and that is a pending suit.

Setelah meneliti dan menimbang keterangan afidavit kedua-dua pihak dan hujah-hujah peguam mereka, saya menolak permohonan bakal pencelah di lampiran 11 perenggan (a), (b) dan (c) iaitu untuk mencelah di dalam prosiding dan menjadikan mereka pihak-pihak. Permohonannya untuk ketepikan lampiran 3 juga ditolak beserta dengan permohonan alternatif untuk mengantung lampiran 3. Kos diberi terhadap bakal pencelah.

Atas fakta yang ada, jelas sekali bahawa bakal pencelah belum lagi diiktiraf sebagai waris oleh mahkamah . Dengan memfailkan prosiding sitasi pada pendapat saya belum cukup untuk mahkamah dapat menganggap mereka sebagai berkepentingan. Kepentingan di sisi undang-undang terletak atas pentadbir harta pusaka si mati (pemohon) yang masih dalam pentadbirannya (lihat *Lee Ah Thaw & Anor v Lee Chun Tek, Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188).

Peguam bakal pencelah mengemukakan kes *Poh Ah Choo v Tan Siw Gim & Ors* [1986] 1 MLJ 337 yang memutuskan mengenai penyebunyian fakta material dalam permohonan ex parte. Pada fikiran saya, kes yang dinyatakan tersebut tidak relevan kepada fakta kes ini.

Adalah juga dihujahkan oleh peguam bakal pencelah bahawa tidak ada usaha untuk menjejaki waris-waris si mati. Permohonan-permohonan untuk surat kuasa tadbir harta pusaka si mati patut diiklankan.

Dalam menangani isu berbangkit ini, saya ingin menarik perhatian kepada prinsip undang-undang dalam hal keadaan yang disaran oleh peguam bakal pencelah.

Dalam kes *Gan Khay Beng & Ors v Ng Liat Cheng & Ors* [1982] 1 MLJ 163, Majlis Privy memutuskan bahawa Mahkamah Persekutuan adalah betul bila memutuskan seperti berikut, petikan penghakiman Lord Russell of Killowen di halaman 167:

> On point (7) above, Gill CJ pointed out that the judge in 1974 was not concerned with the distribution of the estate, but only with the propriety, in the interests of all who might be interested, of the proposed sale. He commented *that there was no rule of law which required all who might be beneficiary interested to be made parties or even identified. With this their Lordships agree.* (Penekanan ditambah.)

Nyata bahawa bakal pencelah lebih terkilan atas harga jualan tanah tersebut yang pada pandangan mereka dijual dengan harga yang murah. Nampaknya persoalan berkisar atas harga tanah tersebut. Oleh yang demikian, terserlah gambaran kepentingan komersil bakal pencelah yang tidak mendapat tempat di bawah prinsip kes *Tohtonku*. Jadi, atas kepentingan komersial, bakal pencelah tidak berhak untuk mencelah.

Seperkara lagi, selagi taraf bakal pencelah masih tidak mendapat pengiktirafan mahkamah yang mereka adalah waris kadim si mati, oleh itu bakal pencelah belum lagi mempunyai hak atau kepentingan sebenar. Jika tidak ada hak manakan untuk mendapat remedi. Mahkamah akan membenarkan seorang itu mencelah jika dia mempunyai kepentingan secara langsung dengan tanah tersebut. Dalam kes *Sander Lead Co Inc v Entores Metal Broker Ltd* [1984] 1 WLR 452 diputuskan:

> A person must have an interest directly related to the subject matter of an action before he is entitled to intervene in the action.

Hak bakal pencelah berkemungkinan wujud jika mereka berjaya dalam prosiding sitasi mereka. Itu pun hanya berkemungkinan sahaja. Apatah lagi dalam kes ini bakal pencelah hanya memfailkan tindakan sitasi, sudah tentu masih kabur lagi dalam penentuan untuk diisytiharkan sebagai waris si mati.

Kepentingan bakal pencelah tidak terjejas jika mereka diiktiraf sebagai waris si mati kerana mereka boleh membawa tindakan terhadap pemohon atas kecuaian tanggungjawab sebagai pengamanah (lihat *Lee Ah Thaw & Anor v Lee Chun Tek*). Lagipun, jika pemohon diputuskan bukan waris si mati, bakal pencelah boleh membawa tindakan untuk mendapat ganti rugi kerana kehilangan tanah tersebut atas sebab penipuan pemohon.

Fakta kes ini menunjukkan tanah tersebut telah dijual kepada Wayrex dan telah disempurnakan. Untuk mengetepikan hakmilik terhadap Wayrex, hendaklah melalui tindakan dengan memplid 'fraud' dan bakal pencelah mesti membuktikan yang pembeli (Wayrex) bersuhabat dalam salahlaku pemohon (lihat s 340 Kanun Tanah Negara 1965). Itu pun jika bakal pencelah mempunyai 'locus standi'.

Dalam prosiding di depan saya menunjukkan bakal pencelah tidak ada kepentingan langsung dengan tanah tersebut. Sewajarnyalah saya menggunakan budi bicara untuk menolak permohonan mereka.

Permohonan bakal pencelah ditolak dengan kos.

Dilaporkan oleh Mohd Rizal Abidin